



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### SOUTH CENTRAL REGIONAL OFFICE

7705 Timberlake Road, Lynchburg, Virginia 24502

(434) 582-5120 Fax (434) 582-5125

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

## STATE WATER CONTROL BOARD

Thomas L. Henderson  
Regional Director

### ENFORCEMENT ACTION

### CONSENT SPECIAL ORDER

#### ISSUED TO

**The Town of Drakes Branch  
Permit Number VA0084433**

#### **SECTION A: Purpose**

This is a Special Order By Consent issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a), between the State Water Control Board and the Town of Drakes Branch for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Town" or "Drakes Branch" means the Town of Drakes Branch located in Charlotte County, Virginia.
7. "Facility" or "STP" means the Wastewater Treatment Plant.
8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "VPDES" means the Virginia Pollutant Discharge Elimination System.
10. "Permit" means VPDES Permit number VA0084433 issued to the Town on February 10, 2006, which expires on February 9, 2011.

**SECTION C: Findings of Facts and Conclusions of Law**

1. The Town owns and operates the Facility located in Drakes Branch, Virginia. The Facility is the subject to the Permit, which allows the Town to discharge treated wastewater into Twitty's Creek of the Roanoke/Yadkin River Basin in strict compliance with the terms, limitations, and requirements delineated therein.
2. During the prior permit cycle the Facility had a schedule of compliance for the effluent limit of total recoverable copper ("copper"), which took effect in February 2005. The copper effluent limit in the Permit is 17 micrograms per liter ("ug/l").
3. Based on the discharge monitoring reports ("DMR") submitted by the Town, the Department issued Notices of Violation ("NOV"), and Warning Letters ("WL") numbers W2005-06-L-0003, issued on 7/11/2005, W2005-08-L-0002, issued on August 2, 2005, W2005-08-L-0012, issued on August 22, 2005, W2005-10-L-0003, issued on October 14, 2005, W2005-11-L-0001, issued on November 10, 2005, W2005-12-L-0003, issued on December 15, 2005, W2006-01-L-0002, issued on January 11, 2006, W2006-02-L-0004, issued on February 7, 2006, W2006-03-L-0002, issued on March 13, 2006, W2006-04-L-1006, issued on April 10, 2006, W2006-06-L-1017, issued on July 6, 2006, W2006-08-L-1002, issued on August 3, 2006, W2006-09-L-0001, issued on September 7, 2006, W2006-10-L-0001, issued on October 3, 2006, W2006-11-L-0003, issued on November 13, 2006, W2006-12-L-0004, issued on December 8, 2006, W2007-01-L-

0002, issued on January 9, 2007, W2007-04-L-0003, issued on April 10, 2007, W2007-05-L-0005, issued on May 22, 2007, and W2007-08-L-1007, issued on August 3, 2007, W2007-09-L-1007, issued on September 6, 2007, W2007-10-L-1006, issued on October 3, 2007, W2007-11-L-0002, issued on November 7, 2007, and W2007-12-L-0006, issued on December 5, 2007. The violations noted in the NOV's are as follows:

- a. Failure to maintain total recoverable copper below the monthly average and maximum effluent limit (22 violations).
  - b. Failure to maintain TSS below the weekly average and maximum effluent limit (1 violation).
  - c. Failure to maintain BOD<sub>5</sub> below the weekly average and maximum effluent limit (1 violation).
  - d. Failure to verify existing Operations & Maintenance (O & M) Manual (1 violation).
  - e. Failure to submit the Significant Discharger Survey by the due date in the Permit (1 violation).
4. Va. Code § 62.1-44.5.A prohibits, *inter alia*, the discharge of "sewage, industrial wastes, other wastes, or any noxious or deleterious substances" to State waters except in compliance with a permit issued by the Board.
  5. Va. Code § 62.1-44.3 defines state waters as "all water, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands."
  6. In a letter dated August 4, 2005, the Town's consultant detailed the efforts made towards reducing the corrosivity of the potable water supply by the addition of soda ash.
  7. On April 26, 2007, the Town and DEQ met to discuss treatment options to achieve compliance with the copper limit. The Town explained that they had entered into negotiations with Global Expertise in Outsourcing (GEO) in pursuing a contract for a proposed prison in the locality. The Town is investigating a possible upgrade/expansion of the current Wastewater Treatment Plant to serve both current demand and the prison facility.

Drakes Branch intends to obtain financial assistance via a Rural Development planning grant, or pursue a joint engineering study with GEO to include the expansion of the STP.

8. The Town, in conjunction with its environmental consultant, proposes to conduct a Water Effect Ratio (WER) Study, using the USEPA Streamlined WER Procedure for Discharges of Copper (EPA-822-R-01-005, 2001).
9. The Town believes that the Study will result in a less stringent copper limit for the Facility by site-specific modification of the discharge Permit. The Order allows for the additional time required for the Department to review the results of the Study, submittal to EPA for conditional approval, Permit amendment procedures, and final approval by EPA.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a), orders Drakes Branch, and Drakes Branch consents, to perform the actions contained in Appendix A and Appendix B of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Drakes Branch, for good cause shown by Drakes Branch or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified by the NOV's cited herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Drakes Branch admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Drakes Branch declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Drakes Branch to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Drakes Branch shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrence. Drakes Branch shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Drakes Branch and not due to a lack of good faith or diligence. Drakes Branch shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

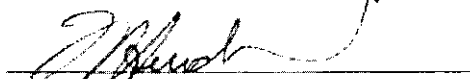
Failure to notify the Regional Director verbally within one (1) business day and in writing within five (5) business days of learning of any condition listed above, which Drakes Branch intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
- 9. This Order shall become effective upon execution by the Director, or his designee, and Drakes Branch.
- 10. This Order shall continue in effect until:
  - a. Drakes Branch petitions the Regional Director to terminate the Order after it has completed all requirements of the Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Drakes Branch.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Drakes Branch from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

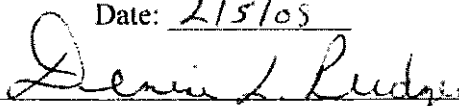
11. By its signature below, Drakes Branch consents to the issuance of this Order.

And it is so ORDERED this 10th day of April, 2008.



Thomas L. Henderson, Director  
South Central Regional Office  
Department of Environmental Quality

Date: 2/5/08

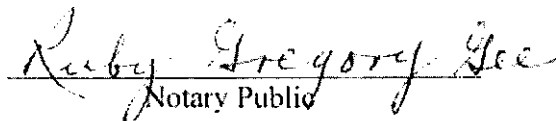
By:   
Denise L. Pridgen, Mayor, Town of Drakes Branch

Commonwealth of Virginia

City/County of Charlotte

The foregoing document was signed and acknowledged before me this 5 day

of February, 2008, by Denise L. Pridgen, Mayor, Town of Drakes Branch.

  
Notary Public

My commission expires: May 31, 2011

112354

## **APPENDIX A**

### **The Town of Drakes Branch shall:**

1. Within 30 days of the effective date of this Order, Drakes Branch shall submit a Plan of Action (POA) to the Department for review and approval; identifying milestones for performing the Water Effect Ratio(WER)Study, the laboratory responsible for the sampling, testing, and statistical analysis of data, along with a projected completion date for the project. Upon approval by the Department, the Town's Plan of Action shall be incorporated into the Order, and enforceable as to the terms contained herein.
2. Within 210 days of the effective date of this Order, Drakes Branch shall submit to the Department for review and approval a Water Effect Ratio (WER) Study, using the USEPA Streamlined WER Procedure for Discharges of Copper (EPA-822-R-01-005, 2001), along with all supporting documentation related to the project.
3. During the interim period covered by this Order, Drakes Branch shall continue the implementation of practices to control copper levels. These practices include, but are not limited to, maintaining the use of chemical treatment additions in the Town's potable water supply system for pH and alkalinity control, and Operations and Maintenance procedures (i.e., periodic flushing of lines within the distribution system).
4. If copper compliance is not achieved within 2 (two) years of the effective date of this Order by means of the SSWER Study, and subsequent change in the copper discharge limit by Permit modification, Drakes Branch shall submit to the Regional Director an alternative means of achieving compliance with the copper



discharge limit by utilizing Best Available Technology (BAT) within 60 days of the 2 (two) year deadline.

5. Drakes Branch shall perform due diligence in the operation of the Town's Sewage Treatment Plant (STP) in order to maintain compliance with all discharge Permit limits.
6. During the period in which this Order remains in effect, Drakes Branch shall be required to submit quarterly progress reports which describe its efforts during the period to reduce copper levels and return to permit compliance. Progress reports are to be submitted with the monthly Discharge Monitoring Reports (DMRs) on or before January 10, April 10, July 10, and October 10 for the preceding quarter.

(The remainder of this page is intentionally left blank.)

## APPENDIX B

### Interim copper limitation:

During the period beginning with the effective date of this Order discharges from the STP shall be limited and monitored in accordance with VPDES Permit VA0084433, except as specified below:

	Monthly Average	Weekly Average
Copper, Total Recoverable	42 ug/L	42 ug/L

(The remainder of this page is intentionally left blank.)